



## WORKERS COMPENSATION ADVISORY COUNCIL MEETING

### Members Present:

Patrick Robinson (Chair)  
Ray Peters  
Joe Shine  
Julie Cherry  
Denis Juge  
Michael Morris  
Greg Hubachek  
Troy Prevot  
Joesph Jolissaint  
Chuck Davoli  
Clark Cossé, III  
Dr. Hank Eiserloh (*Dr. Laughlin subbed*)

### Members Absent:

Bob Israel  
Dr. Dan Gallagher  
Mark Kruse  
Eddie Crawford  
Dr. Jim Quillen

## AGENDA

- Call to Order- Start at 9:35am
- Proposed Revisions to LWC-WC-1008/*Disputed Claim for Compensation* and Answer forms
  - **Chuck Davoli**- (Pg. 4) agree with addition of expedited hearing section. Concerned with format.
    - 1<sup>st</sup>- For Pro se claimants, it is becoming more difficult; for example, difference between third party administrator and insurer.
    - 2<sup>nd</sup>- Also, 1008 is now tied to 1208 which is inappropriate.
    - 3<sup>rd</sup>- Concerned about language
      - Pg. 4 “NOTICES: Failure to *properly* complete this form...may result in the rejection, delay, or dismissal...”. “Properly” is subject to interruption of clerk, etc. This may lead to prescription issues.
      - Pg. 2 (e) “Parish where accident...” what if accident didn’t occur in Louisiana? The Pro se claimant may not know what to put which would cause form being improperly filled out.
      - Pg. 2 (g) “...injured Body Part...” may want to say body part“S” instead of one single part since it can be multiple parts.
      - Pg. 2 (b) “Date of accident or date occupational disease symptoms began” which is more important? When symptoms began {they may not remember}, when the disability occurred, or when they had a reasonable belief that the disease is work related. There are 3 conjunctive elements to prescription in occupational disease.
  - **Response via Patrick**- Complexity may not be a form issue but just the law in general. I don’t know if this form is any more difficult than the old form; the old form didn’t match up with the current law. 1208 is mentioned to warn them of it.

The district court dispute resolution specialists can help fill out the form. Occupational disease would take multiple pages to cover everything. Any suggestions on how to mention that type of claim when it is not an accident?

- **Chuck Davoli**- will document suggestions. For example, where someone claims affirmative total could be determined as a willful misrepresentation to claim more benefits. Pg. 3 (k) “Death benefits”- A Pro se claimant probably doesn’t know you can get burial expenses. Just say ‘Disability Benefits’.
  - **Response via Patrick**- problem is trying to simplify something that is not simple.
- **Patrick**- Answer form. (time stamp 13:44:50)
  - **Pg. 2. #16** “failure to use safety devices” will be struck out since it is no longer an affirmative defense.
  - **Chuck Davoli**- the statute says you SHALL give notice. On Pg. 2 is this a waiver of notice?
    - **Response via Patrick**- this is an attempt to expedite these by sending notice via fax or email. The court normally sends notice to represented parties via first-class mail which has no documentation. Sometimes parties do not show up then say they didn’t receive notice.
      - **Response via Greg Hubachek**- District 6 & 9 have you sign off on accepting notice via fax or email
      - **Response via Joe Jolissaint**- They do allow to put multiple emails. Federal courts allow to list as many emails as you want.
    - Goal is to have an electronic filing system in place by next year.
      - **Response via Larry White** [audience]- it does allow more than one email.
- Pending/Proposed Administrative Rules Changes and Updates (time stamp 13:47:46)
  - The first three have been submitted to legislative fiscal office, then will be submitted to Register
  - LAC 40:I:311 – electronic medical billing
    - Fixed clerical error of payment deadline: 30 to 60 days
  - Process will have these published on the 20<sup>th</sup> on July. Anyone can attend public hearings.
  - LAC 40:I:5515 – transfer of venue *sua sponte*
    - Discussed at March council meeting.
    - Normally judge sends case to correct venue on their own motion and without hearing. Venue is a waiveable exception and transfer can potentially adversely impact prescription. It is up to respondent to raise exception if it is an issue.
    - Disputed claims remain subject to venue provisions in R.S. 23:1310.4
  - LAC 40:I:5533.1 – Complaints alleging Judicial Misconduct/Disability (Time stamp 13:50:48)
    - Discussed at March council meeting.
    - Problem: Workers’ Compensation judges are not subject to Judicial Commission. They are unique civil servants. Administration does not want to interfere with judicial decision. People don’t know who to complain to.

- If case is in litigation, opposing council is copied on the submitted complaint.
- The office screens complaint and investigation will take place if necessary.
- Judges are still subject to disciplinary rules as attorneys.
- **Chuck Davoli**- We are sanctioning gripes. What is frivolous? I'm worried about future administration. I presume this came up in response to the challenge of constitutionality in the recent 19<sup>th</sup> JDC case. I think this is unnecessary
- **Greg Hubechek**- Are our judges subject to the Judicial Committee?
  - **Response via Patrick**- No, they are not.
- **Denis Juge**- We need some way to raise objections, is there a way statutorily we can give authority to Supreme Court?
  - Response via **Clark Cossé, III**- Probably need a constitutional amendment
- **Patrick**- Complaint must be sent to opposing party as well. Not having this process doesn't stop complaints from being sent to the Director.
- **Ray Peters**- How are complaints lodged against the Unemployment Insurance Administrative law judges?
  - **Response via Patrick**- We will look into that
- **Greg Hubachek**- take it out of chain of command so supervisors aren't reviewing. Just I think is why they have Judicial Commission.
  - **Response via Ray Peters**- think it is a perceptual issue. Who is a judge and who is not.
- **Patrick**- OWC needs a formal process. Otherwise, we receive complaints if we respond to complaints about judges and we receive complaints if we don't.
- **Denis Juge**- What good does the rule do? There's not many situations where you can legally dismiss them. Civil service pretty much locks these people in.
  - **Response via Patrick**- Prevents ODC complaints. OWC wants to know if judge is showing up late all the time; if judge is not ruling for 6 months all the time, etc. However, complaints to the director about particular cases or rulings are improper. Example: party complains judge doesn't know or understand the preliminary judgment process. It's not the position of the OWC director to tell a judge the law. The remedy is to file a writ/appeal/post trial motion via Code of Civil Procedure. However, if the complaint is about a judge showing up intoxicated or sleeping in court, bias, etc., we need to know about that. The proposed rule requires the complainant to copy opposing counsel so it is not ex-parte communication.
- **Clark Cossé, III**- how will the complaint be resolved?
  - **Response via Patrick**- The rule requires the Director or their designee, probably be Chief Judge, to investigate.
- **Greg Hubachek**- Can it go directly to Civil Service and bypass Director?
  - **Response via Larry White** [*audience member*]- There would have to be change in civil service rules which would have to go C.S. Director to be recommended to C.S. Commission for them to approve.

- **Response via Patrick**- If you remove Director from process, then what's the point of the Director being a supervisor of hearing section? Director should be a buffer for investigating complaints.
    - **Response via Greg Hubchek**- Motion for Recusal should be used for bias instead of this.
      - **Response via Patrick**- same issue for Judiciary commission.
  - **Chuck Davoli**- Another issue is D. Shouldn't a copy of the recommendation go to the person making the complaint as well?
    - **Response via Patrick**- blurry line between civil servant and Judge. Personnel issue. You can always submit the complaint to ODC. Difference between employment disciplinary action, which is confidential, and other discipline that is not.
  - **Clark Cossé, III**- what do you do if investigation finds complaint has merit?
    - **Response via Michael Morris**- have to look at Civil Service regs. There's statutory protection.
    - **Response via Patrick**- Can always go to LADB.
  - **Julie Cherry**- Should make person aware the complaint was received and recommendation should be confidential
  - **Greg Hubchek**- Please clarify "Designee" is Chief Judge.
- LAC 40:I:6605 – OWC filing fees (Time stamp 14:18:42)
  - Blue line copy in handouts
  - Budget is tight and these fees have been the same for many years.
  - **Chuck Davoli**- only allow to spend a certain amount like 2<sup>nd</sup> injury?
    - **Response via Larry White [audience]**- legislation needs to appropriate funds.
  - **Chuck Davoli**- can you change fees by rule?
    - **Response via Patrick**- only filing fee is determined by statute which says \$50, we were only charging \$30.
    - **Response via Joe Jolissant**- Secretary of State changed the service of process to \$50.
  - **Patrick**- change stamp fee to \$5 (currently \$1) to cut down on lawyers going fishing through subpoenas.
  - If decided to increase fees, it will be on agenda again before submission
- Revisions to LAC 40:I:2715 - re 1010/1009/1008 process (carried over from prior meeting) (Time stamp 14:24:41)
  - **Patrick** - medical review process is supposed to be clinical. The evidence reviewed by the medical director at the 1009 level doesn't include depositions, testimony, etc. To fit the clinical process to the legal process, it was suggested that Judges send back questions of the new evidence instead of just remanding the decision and sending the non-clinical evidence back to the Medical Director. Revision also includes a proposed definition of "current" as within 30 days.
  - **Michael Morris**- should reference statute. Likes 1010A solution
  - **Michael Morris**- Payor should see evidence prior to Hearing
    - **Response via Greg Hubachek**- Pg. 11, 4a
      - Line 4 and 5: five days of service on payor

- **Michael Morris**- let attorney sign 1010 so new evidence can be easily forwarded.
    - **Greg Hubachek**- Rep. Gaines believes you should not be forced to go back to square one.
    - **Patrick**- what about testimony that may not be available until the hearing? How can that be sent to the payor prior to the hearing?
      - **Response via Denis Juge**- suggests affidavit of what fact witness would say i.e. claimant
    - **Greg Hubachek**- this is also on Page 10 #4 and Pg. 7 #6 talks about service. Talks about all “parties” getting service but I’m not a party for 1010.
      - **Response via Patrick**- pg. 2 #6.c. can clarify who gets service on payors side as well.
    - **Troy Prevot**- so there’s the option to cure issue before hearing? Does it provide safe harbor? What about penalties and attorney’s fees?
      - **Response via Greg Hubachek**- Can be resolved before hearing. No safe harbor is mentioned. Don’t know if 1009 appeal is inclusive of penalties and attorney’s fees issues. However, *Soniat v. Crown Buick & Risk Mgmt Serv.*, 14-489 (La. App. 5 Cir. 12/16/14) awarded penalties & attorney fees.
      - **Response via Patrick**- there have been several cases like that. Pg. 11 D allows safe harbor for payor for approving after new evidence. It doesn’t cover tacit denial in order to discourage those.
    - **Michael Morris**- does it still go to Medical Director?
      - **Response via Patrick**- originally after the 5 days then the new evidence goes to the Medical Director; now the WC judge can ask questions to Medical Director based on the new evidence.
    - **Joe Jolissaint**: 1002 requests?
      - Response via Patrick- it can be requested and provided to attorneys that are party to claim.
  - Medical Treatment Schedule Update (time stamp 14:53:32)
    - Dr. Rich and Dr. Lee have worked on them. They will be presented to WCAC then to *Register* for publication.
- 2015 Legislative Session Recap (time stamp 14:53:57)
  - SB 107 – Second Injury Board
    - Passed with no opposition; amended at Senate Labor to remove deadline for deductibles entirely
  - HB696 – Summary Judgments
    - Significant to attorneys
- Agency Update (time stamp 14:55:38)
  - Fee Schedule
    - Providing to stockholders for model input; then submit to Register
    - **Troy Prevot**- Will NCCI get a chance to model as well?
      - **Response via Patrick**- Yes.
    - **Patrick**- sometime in August hold public meeting separate from WCAC for commentary; it will be posted on [www.laworks.net](http://www.laworks.net) before final revisions.
  - Deputy Director

- Larry White is retiring in June 2016; Pauline Williams will be replacing him
  - Dr. Rich is Medical Director
    - resigning ~~July 3<sup>rd</sup>~~ August 31<sup>st</sup>.
    - OWCA can review resumes via email.
- Things to Ponder (aka *Deep Thoughts by Patrick Robinson*) (timestamp 15:03:04)
  - Formulary
    - WorkCompCentral article “Advisory Council to Take up Formulary Issue after Bill Dies” by Tauren Dyson
      - About SB256
      - Badly written
    - Goal is to streamline process for people to get appropriate meds timely without being overloaded on meds they don’t need.
    - Do we formally select a formulary? If so, what template? Do create LA formulary? Or do we just add to guidelines on how to prescribe and monitor?
    - Also, what do we do for 1010 process in regards to meds? Mostly go through PBMs which can differ.
    - **Ray Peters**- It should follow evidence based guidelines
    - **Troy Prevot**- they work independently but address two different things. Formulary is for access to medications while guidelines determine the use. Then the guidelines also address abuse which should be a MAC issue.
    - **Patrick**- formulary should never exclude a medication entirely.
    - **Dr. Laughlin** (*in Dr. Eiserloh’s place*) - formulary is thought in how to save money. Example, is Celebrex nostril needed more than the less expensive ibuprofen? Usually formularies from Blue Cross, Aetna, etc. are used which are setup for price control.
      - Proposal was there should be a 5<sup>th</sup> vital sign “pain” which is 0-10. This caused increase in prescribing pain meds.
      - **Response via Troy**- need guidelines for alternative ways to treat pain
      - **Dr. Laughlin**- go to psychologist.
    - **Dr. Hebert** [*audience member*] - agree that doctors were told not to let people hurt. Help claimants “cost be damned”
      - **Dr. Lee** [*audience member*] - person who pushed for opioids now under investigation for deaths related to opioids. 2 generations of doctors were told to prescribe opioids.
  - Attorney fees in 1009 appeals (timestamp 15:17:30)
    - LWC gets about 10 a month. If attorney successful, no avenue for them to get paid. Should we establish a fair payment option for them?
    - **Joe Jolissaint**- bona fide issue since has to pay through contingency but not out of pocket
      - **Clark Cossé, III**- allow to pay then deduct out of contingency?
        - **Joe Jolissaint**- medical only; no settlement
    - **Greg Hubachek**- hard for people to get legal counsel since attorneys won’t get paid.
      - **Denis Juge**- statutory change

- Technical Amendments for next session (timestamp 15:21:41)
  - If notice statute that was changed but not all its connected parts/statutes, please let OWC know via email for submission
- New Date for July WCAC Meeting (timestamp 15:22:39)
  - July 23<sup>rd</sup> is cancelled/deferred to August 27th
- Other New Business (timestamp 15:24:08)
- Public Comment (timestamp 15:24:26)
- Adjourn at 11:25am